CONDITIONAL LIBERATION (PAROLE) IN FRANCE

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I. CONCEPTUAL AND HISTORICAL BACKGROUND

Anglo-American parole owes its theoretical development and its early systematization, indeed its very existence, to France.

1. This article is an analysis of the French parole system. It is a precursor of a more extensive work that will be completed in the near future by the writer and Professor Robert A. Fairbanks, University of Arkansas School of Law. The forthcoming work will make a detailed comparative analysis of the parole systems in the United States and in France and will make suggestions for the improvement of both systems. One of the questions that the upcoming study will examine is whether borrowing some aspect of the French system could alleviate any of the evils that many commentators in the United States are decrying and for which they are suggesting the abandonment of parole entirely. It is possible that a modified adoption of the French approach to conditional liberation would alleviate at least some of the evils of indeterminate sentencing, release for administrative expediency, and inequitable and arbitrary sentencing and release on parole. Perhaps the positive theoretical value of parole does not have to be lost in order to solve these problems or to prevent the release of unrehabilitated convicts into society. These issues, as well as the problems of funding such a program, and the constitutional and other possible impasses related to the adoption of any aspect of the French system of parole, must be considered in detail.

Deficiencies in any system of law should not, as some have suggested, require the inexorable conclusion that the system does not have value or that some of the valuable aspects of the theory, even if they have not been implemented very well, should not be studied with an eye to possible adaptation to another system of law. Any such study must consider not only the weakness of the system's theory, or the degree of proper implementation of the theory in the context of the foreign culture, but also the differing conceptualizations of the theory based on differences in the cultures. The study must incorporate historical, sociological, and anthropological knowledge of both systems, because it is only through a complete study that one may determine whether it is possible to adopt a foreign system and have it function efficiently within his own system. Thus, this article analyzes the French system of conditional liberation and prepares the way for a thorough comparative analysis of the French and United States systems of parole.

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tion, but that too often the great ideas born in France are neglected there to find their baptism of success in other countries. This remark characterizes the history of the parole concept in France. Yet, the latest innovations being developed in France portend new possibilities for success in the rehabilitation of convicts. This section will trace briefly the history of conditional liberation, the French counterpart of Anglo-American parole, and describe the development of the notion from its beginnings to its present state in France as an autonomous phase of the rehabilitation program.

Conditional liberation (la libération conditionnelle) is a

2. Langlais, the famous conseiller d'Etat (judge in the Supreme Administrative Court) of the late nineteenth century made this statement in a speech to the legislative corps on July 17, 1880. See A. Besançon, supra note 1, at 12.

3. This is especially important today given the current debate over the value of parole and the skepticism concerning rehabilitation in general. See, e.g., A. Von Hirsch, Doing Justice (1976); A. Neier, Crime and Punishment: A Radical Solution (1976); Gardner, A Renaissance of Retribution—An Examination of Doing Justice, 1976 Wis. L. Rev. 781.

4. Conditional liberation (la libération conditionnelle) or parole should not be confused with provisional release (la libération provisoire) which liberates accused individuals during the investigation of the crime and the criminal proceedings, C. Pr. Pen. art. 137, or with simple suspension, or suspension with probation (sursis), C. Pr. Pen. arts. 734-47. For convenience, this footnote presents a list of some of the French laws and regulations relating to conditional liberation.


Modifications have been made in many of the above-mentioned articles: C. Pr. Pen. arts. 723, 729, and 732 were modified by Law no. 70-643 of July 17, 1970 (D.1970.199); articles 729, 703, 731, and 733 were modified by Law no. 72-1226 of Dec. 29, 1972 (D.1973.41). To accommodate these reforms, Decree no. 73-281 of March 7, 1973 (D.1973.164), modified C. Pr. Pen. arts. D.520, D.526-.530, D.532-.537, D.540,
mechanism whereby convicts who have shown evidence of social regeneration while in prison may be conditionally released prior to their official release date. Early release is subordinated to certain control conditions and measures of assistance. Revocation of conditional liberation and consequent reincarceration may result from notorious bad conduct, another conviction, or failure to adhere to the conditions enunciated in the decision of conditional liberation.

In theory, conditional liberation serves a threefold purpose: it is an incentive to rehabilitation for the convict while he is in prison; it is a further development of that rehabilitation in a state of controlled freedom; and it is a test of the rehabilitation program’s success. Its purpose as regards convicts still in prison is to provide some motivation to help them achieve the goal of rehabilitation; to help them actually become morally and socially regenerated. However, throughout its history in both France and the United States, parole has been used as a mere administrative expedient. It has been used as either a means of promoting good conduct in prison or, even worse, as a means of remedying prison overcrowding. Neither of these uses promotes rehabilitation; on the contrary, they engender cynicism and denigrate rehabilitation.

The French have made some effort to overcome these deficiencies. The French model today, at least in theory, requires the convict to present serious evidence of actual social regeneration before he may be placed on conditional liberation. Being “good” in prison is not sufficient evidence of social regeneration.

and D.541. Finally, a new modification of article 729 was made by article 39 of Law no. 75-625 of July 11, 1975 (D.1975.259). Commentary on the legal and reglementary dispositions of conditional liberation may be found in Part V (CIRC. OF GEN. INSTRUCTIONS), C. PR. PEN. arts. C.830-.979. In addition, specialized circulars, published by the Minister of Justice under the seal of the Penitentiary Administration and addressed to the Judges of the Application of Sentences (les Juges de l’Application des Peines) are useful. See CIRC. MIN. JUST. n.72-38, Dec. 30, 1972; n.73-1 bis., Dec. 30, 1972; n.72-35, Dec. 21, 1972.


6. C. PR. PEN. art. 729, para. 1, as modified by L. no. 72-1226 of Dec. 29, 1972. See also C. PR. PEN. art. D.528 (Decree no. 73-281 of March 7, 1973), and arts. C.846 et seq. of the CIRC. FOR THE APPLICATION OF THE C. PR. PEN. See notes 50-58, infra, and accompanying text.
During the phase of actual conditional liberation, the convict, having provided evidence of his rehabilitation, is provided in return with a means of further social development and readjustment in a milieu of freedom. The convict is given moral and physical assistance to help him surmount the complex and difficult problems that face a newly liberated convict. The convict’s freedom is not absolute, however, because his activities are controlled and supervised. Society and the integrity of the institution of conditional liberation are protected by the sanction of reincarceration for those parolees who prove unworthy of the benefits of parole. Heavy surveillance and control are intended to ensure the effectiveness of the sanction.

This is the ideal of the French model. Unfortunately, the history of conditional liberation has not proved French society fully equal to the task of meeting the ideal of the theory. Yet, even with the system’s failures and deficiencies over the years, one study has shown that the recidivism rate for the period of ten years following definitive liberation was two times less frequent for convicts who ended their sentence on conditional liberation than for those who did not.7

A. Origin of Conditional Liberation

Arnould Bonneville de Marsangy,8 a nineteenth century French magistrate and publicist, may aptly be recognized as the father of the idea of parole, as he developed and systematized the idea of controlled and conditional liberation during

7. The percentages of recidivism were: 27.20% for those who had finished their sentence on conditional liberation versus 56.32% for those who had not. Justice Ministry, Rapport exercice 147-55, 161 (1969); Justice Ministry, Rapport exercice 157, 178, 190 (1970), cited in G. Stefani, supra note 1, at 533, 534 n.3. Although statistics are sometimes difficult to interpret, these percentages are impressive.

8. Arnould Bonneville de Marsangy (Mons, 1802 - Paris, 1874), considered to be among the first rank of French criminal law jurists, began his judicial career as an assistant prosecuting magistrate at Chateauroux in 1823. He was prosecutor in St. Amand, Nogent-le-Rotrou, Reims, Versailles, and later President of the Civil Tribunal of Versailles in 1852. In 1854, he became conseiller (judge) of the Supreme Court in Paris. His significant publications in the area of penal reform include: De la récidive (1844); Traité des institutions complémentaire du régime pénitentiaire (1847); De l’amélioration de la loi criminelle, en vue d’une justice plus prompt et plus efficace (2 vols., 1855-1864). Volume I of this latter work pertains most especially to conditional liberation. For a brief biography, see Normandieu, Arnould de Bonneville de Marsangy, Un Précèdant de Criminologie Moderne, 1967 Rev. Sc. Crim. 386.
the mid-nineteenth century. Although the concept had been considered by others and even put to meager and timid use for the benefit of some Parisian juvenile delinquents, it was Bonneville de Marsangy who, in 1846, presented to the French legislature the first general program of conditional liberation, which he entitled, "Formula for the Execution of Preparatory Liberations." His proposal provided for the conditional liberation of prisoners after at least one-half of their sentence had been served. After showing irrecusable evidence of rehabilitation, a convict would be allowed to serve the balance of his sentence in limited freedom outside prison, provided that certain specific conditions were met prior to the liberation being allowed.

Bonneville de Marsangy's system of conditional liberation contained a four-pronged plan for the rehabilitation of convicts and concomitant protection of society: (1) encouragement of incarcerated convicts to amend their lives so as to be prepared to live again in society by providing those who succeed with the opportunity of living in society prior to their official release date; (2) patronage or physical and psychological support and

9. A. Besançon, supra note 1, at 12. In 1817, the French Penal Administration began placing some juvenile delinquents into a home directed by Abbé Arnoult, in lieu of placing them in the Prison of Saint-Pelagie. According to the records, 250 juveniles were admitted to the home between 1817 and 1831, of which only 25 became recidivists. Guillot, Les prisons de Paris, cited in A. Besançon, supra note 1, at 12.

10. II A. de Bonneville de Marsangy, supra note 1, at 461, quoted in A. Besançon, supra note 1, at 18-19, provides:

This liberation will consist in the faculty provided to the prisoner to serve his sentence in free air, outside the penitentiary, in the place that will be designated for him under the surveillance of the administrative authority.

The conditions of this liberation will be:

1. an engagement by his patron to furnish work or means of subsistence to the parolee, during the duration of the preparatory liberation;
2. the certificate of rehabilitation delivered by the director or chief guardian, by his chaplin or pastor, and by the Commission of Surveillance at the prison;
3. the favorable decision of the prefect of police;

The Minister of the Interior will make the sovereign decision in each request for preparatory liberation; In the case of bad conduct or failure to observe the conditions described above, the parolee will be immediately reintegrated into his prison to continue his sentence.

The measure of which this act is concerned has no concurrence and creates no obstacle to the supreme right of grace, which continues to subsist in complete integrity and with its character of an exceptional favor. (Writer's trans.)
assistance for the convict and his family during the parole period; (3) surveillance, supervision, and control of the convict while on parole; and (4) reincarceration in case of bad conduct or violation of the conditions of liberation. Conditional liberation was conceived to be much more than a simple remission of the penalty or an administrative or disciplinary favor; it was intended to be a measure for the social regeneration of convicts under the most favorable circumstances possible while still protecting society by heavy surveillance and strict enforcement of the sanction of reincarceration.

This system for rehabilitating convicts and reintegrating them into society was to be implemented in two distinct yet interdependent phases. In the first phase, moral regeneration was to be strived for as the incarcerated convict tried to meet the requisites of early conditional release by showing serious evidence of rehabilitation. The second phase was not conceived to be one of absolute liberty, but rather something between absolute imprisonment and absolute freedom. This liberated phase was to provide education, physical and emotional support, and continued guidance toward rehabilitation under the control and supervision required to protect society.

Provisions for post-release assistance and control were designed to provide the parolee with the wherewithal to face the extreme difficulties related to release from prison, such as distrust, unemployment, misery, intimidation, and lack of guidance. Bonneville de Marsangy characterized these difficulties as being so detrimental that they would “perturb and annul the parolee’s rehabilitation and push him almost inevitably to commit new infractions” within the first two years of release, unless the mitigating effects of proper support and control could be implemented.

The advanced ideas of Bonneville de Marsangy, however, bore no early fruit of adoption in France. In fact, in 1853 England and Ireland became the first countries to adopt the Marsangy system, and they were soon followed by several other countries.

11. See A. Besançon, supra note 1, at 21; G. Stefani, supra note 1, at 520.
12. See notes 50-59, infra, and accompanying text.
13. A. de Bonneville de Marsangy, supra note 1, at 14-15. (Writer’s trans.)
14. A. Besançon, supra note 1, at 21. See the Bill of Aug. 20, 1853, relating to
The British law was designed after Bonneville de Marsangy’s model. In theory, it required convicts to serve a defined minimum time in prison and an indeterminate period of hard labor in order to become eligible for a ticket of leave. Once obtained, the ticket of leave was subject to immediate revocation for bad conduct or violation of the specified conditions.

In a preview of what would later occur in both France and the United States, the British administration of the new parole law was sadly bungled. The improper application of the law, including the automatic release of prisoners, without regard to their rehabilitation, for reasons of administrative expediency and the failure to control, supervise, or assist the convicts once released, or to return them to prison if they violated the conditions, led to a spectacular ascendance in the recidivism rate. Backlash reaction to the institution of parole—and to the culprits who had misapplied it—was severe.

Ireland, on the other hand, administered the parole system as it was intended by its originators. “Evidence” of rehabilitation was required before release was considered and assistance, control, and surveillance were applied after release. The sanction of reincarceration for misconduct or violation of the conditions of release was rigorously enforced. The result was as spectacular in its success as the English experience was in its failure. In 1854, Irish prisons contained 4,278 convicts; in 1861, after application of Bonneville de Marsangy’s system of parole, only 1,492 prisoners were left behind bars.

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16. The North British Review of February 1863 and the Edinburgh Review of the same year characterized the execution of the Bill of 1853 as one of the saddest spectacles in history. Four Visiting Justices, Observations on the Treatment of Convicts in Ireland, 38 No. British Rev. 21 (1863), reviewed in Clay, The Prison Chaplin: A Memoire of the Rev. John Clay, B.D., Late Chaplin of Preston Goal, 1863 Edinburgh Rev. 241, 243; see also A. Besançon, note 1, supra, at 16; A. de Bonneville de Marsangy, supra note 1, at 85. The reaction was not unlike that in the United States today. See, e.g., the works cited in note 3, supra.
17. Evidence of rehabilitation required more than “being good” in prison. See notes 51-58, infra, and accompanying text.
18. This is particularly impressive because only fifty individuals were deported
The French experience was not to be as successful. It was not until 1885 that the French Jurist J. O. Beranger succeeded in having the Senate approve a bill inspired by Bonneville de Marsangy's system. However, the success was chimerical; the legislative history of Beranger's bill indicates the French legislature's lack of understanding or acceptance of Marsangy's notion of conditional liberation.

Conditional or preparatory liberation is the act by which one accords to the convict who merits this reward, by his application to his work and his good conduct, his anticipated liberation, charged to continue to conduct himself honestly, and under the condition that he will be reintegrated [into prison] if he provides any new reasons for complaint.

The legislators appear to have interpreted the system merely as a means to provide an administrative reward for good conduct in prison. The French execution of the system, like the English, failed abysmally because it suffered from a basic misunderstanding of the purpose and methods of the parole system.

B. French Failure of Early Implementation

Bonneville de Marsangy's enlightened conceptual development of conditional liberation notwithstanding, parole in
France was destined to suffer critical maladministration by executive authorities. Most of the basic elements of Bonneville de Marsangy's plan were violated by administrative officials from 1885 through 1952. The bestowal of conditional liberation became nothing more than a disciplinary favor awarded with more or less generosity depending on the regime in power. Even worse, conditional liberation was often used merely as a tool for prison officials to ameliorate administrative problems such as prison overcrowding or budget deficits. Rehabilitation was incidental, not primary; it occurred rarely.

Moral regeneration within penal institutions was actually hampered by this system wherein a convict was released on conditional liberation for reasons altogether independent of any degree of rehabilitation. The conditions in prison were not conducive to rehabilitation, and the measures of post-release assistance, surveillance, and control were not implemented effectively. Furthermore, the sanction of reincarceration was not generally applied when the parolee violated the conditions of his release, but rather only in those cases in which the parolee committed an additional offense during the period of conditional liberation. Thus, the early release of unrehabilitated convicts, the failure to support or supervise released convicts, and the failure to reincarcerate a parolee until a new crime had been committed, actually contributed to a spectacular ascendance in recidivism. The tendency of commentators, legislators, and administrators was to blame the increase in recidivism rates on the institution of conditional liberation itself, but the true culprit was maladministration. This misplacement of blame appears to be the tendency even today.

The French conception of the separation of governmental powers and historical distrust of the judiciary contributed to the development of administrative abuses which virtually destroyed conditional liberation's potential for improving the ability of the criminal justice system to reduce recidivism by rehabilitating criminals. Administrators were able to relieve prison congestion and reduce expenditures by automatically

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21. Since 1952, there has been progress, but even today the system has yet to meet Marsangy's ideal. See G. Stefani, supra note 1, at § 533.

22. For a sample of this view in the United States, see note 3, supra.
releasing convicts when they had served the minimum required time; the administrators succumbed to administrative pressures to the detriment of both society and the institution of conditional liberation. The French notion that the judiciary should not be allowed to meddle in an area designated as the province of the executive prevented the judge, the one person most independent of the pressures of administrative expediency, from playing a role in the effective realization of the goals of a judicial sentence.

It was not until the French legislators realized the value of judicial control in matters of conditional liberation and other post-sentencing regimes that the goals of Bonneville de Marsangy began to see the possibility of fruition. Eventually, a new judicial office was created with the authority of an investigative judge: this office was attached to the Courts of Primary Jurisdiction.23

The idea of judicial participation in the post-sentencing phase has been vigorously debated in France since the 1930's. With the establishment of the institution of the Judge of the Application of Sentences and the subsequent reforms that have enlarged this judge's authority, the judiciary has obtained, at least to a degree, the authority to control and influence the results of its sentencing. Indeed, the judiciary has obtained the authority to make judicial decisions relating to the progress of the post-sentencing regime. The proponents of enlarged judicial authority argue that if the judiciary is responsible for determining the sentence, and if the goal of sentencing is the rehabilitation of convicts and their readaptation into life in society, then the judiciary should have the authority to adjust the sentence, if necessary, and to apply intervening measures of “treatment.” If adjustments in the regime of a convict are to be made at all, it should be the judiciary, in keeping with its inherent role as the protector of individual rights, that makes the decision.24

23. The Courts of Primary Jurisdiction (Tribunaux de Grande Instance) have the jurisdiction and make-up of the former district courts. Each French department (geographical jurisdictions somewhat analogous to states of the United States) has at least one Court of Primary Jurisdiction located in its principal city. This office, the Judge of the Application of Sentences (Juge de l'Application des Peines), will be analyzed in detail following the discussion of the conditional liberation process.

24. See G. Stefani, supra note 1, at 343, and the works cited therein. These works
II. THE PROCESS OF CONDITIONAL LIBERATION

The purpose of sentence execution as it is currently conceived in French law is "to promote the amendment of convicts and to prepare their social rehabilitation." In theory, conditional liberation, as part of that process, is designed to serve the same overall purpose.

A. Competent Authority Over Matters Related to Conditional Liberation

The legal authority for control, application, and administration of conditional liberation rests with the Judge of the Application of Sentences. The authority to grant or revoke conditional liberation rests with either the Judge of the Application of Sentences or the Minister of Justice. The criterion for determining which institution has this decisional authority were used extensively in the preparation of this discussion of the Judge of the Application of Sentences. Other works used include: M. DARMON, L'INDIVIDUALISATION JUDICIAIRE (1972); J. FRANCES-MAGRE, LA NATURE JURIDIQUE DES DECISIONS DU JUGE DE L'APPLICATION DES PEINES, J.C.P. 1973, II.17517; J. IMBERT & G. LEVASSEUR, LE POUVOIR DES JUGES ET DES BUREAUX (1972); G. STEFANI & G. LEVASSEUR, DROIT PENAL GENERAL ET CRIMINOLOGIE § 361 (4th ed. 1976); LEGAL, LES POUVOIRS DU JUGE DE L'APPLICATION DES PEINES ET LEUR EVOLUTION, 1975 REV. SC. CIRM. 311; LEVASSEUR, UN PILOTE NECESSAIRE: LE JUGE DE L'APPLICATION DES PEINES, 1970 REV. PENIT. 743.

Even today, the importance of the role of the Judge of the Application of Sentences is not understood by most of the French population or even many in the legislature. The legislature has seen fit to provide the judiciary with only limited decision-making authority in the post-sentence phase, and funding has not been sufficient to allow the measure to work properly even on this limited scale.

It must be acknowledged that judicial input at the stage of conditional liberation is not a panacea. Large amounts of funding will be necessary for conditional liberation to play its intended role in the rehabilitation of criminals and the protection of society. Nevertheless, funds expended properly into a well-functioning conditional liberation system, as conceived by Bonneville de Marsangy, might sufficiently lower the rate of recidivism to overcome the costs of the program. If this happened, the financial costs would be much less than the costs of society's victimization by recidivists. Moreover, this cost certainly would be worth the profit which society would derive from newly productive individuals who would otherwise be damaging society through their crime, or depriving society of whatever positive input they might be capable of while draining funds from treasury coffers for their support in prison. Judicial oversight and control certainly could be a major factor in alleviating many of the problems currently faced by most parole systems. For example, it would go a long way toward preventing the use of the system as a mere administrative expedient.

25. C. Pr. Pen. art. 728. (Writer's trans.)
26. See notes 94-126, infra, and accompanying text.
in each individual case is the length of the term or terms of imprisonment meted out by the sentencing judge.\footnote{27}

Several institutions are important in this process. The decision to grant or reject conditional liberation, when made by the Judge of the Application of Sentences, and the proposal to the Minister of Justice for conditional liberation, also made by the Judge of the Application of Sentences, cannot be made without the benefit of an opinion from the Commission of the Application of Sentences.\footnote{28} The Minister of Justice has the option of consulting with the Consultative Committee for Conditional Liberation, but he is required to consult the prefect of the Department in which the convict wishes to live. It is no longer necessary, as it was under the prior article 730, to obtain the opinion of the prison warden (chef d’établissement). Nevertheless, it is the prison warden who establishes and maintains the dossier which serves as the basis for any decision made.

**B. Incarceration Time Requirements**

The French Code of Criminal Procedure limits the availa-
bility of conditional liberation to those convicts who have served a specified minimum amount of their term of imprisonment. There are no indeterminate sentences. French conditional liberation, therefore, reflects an interesting mix of classical penological principles requiring specific terms of imprisonment to be prescribed by law for each offense (the length depending on the gravity of the offense) and requiring a legislative basis for any modification of any sentence, with the relatively recent theories of social defense and the individualization of sentences.

The judge’s discretion in granting conditional liberation exists only after the convict has met the minimum codal time requirement for serving his prison sentence; the formula for determining the minimum time requirement for each crime is

29. Cesare Beccaria, the major force in the development of classical penal theory, presented his theory of crime and punishment in his famous work, *Dei delitti et delle pene* (1764). Beccaria’s theory of criminal justice is based on philosophical utilitarianism. He believed that the punishment for any crime must follow directly and surely upon that crime’s commission. The punishment must fit the crime and must be applied nondiscriminatorily. Beccaria sought to eradicate inequality in the application of punishment and to induce moderation of the barbaric modes of punishment rampant during his lifetime. The penalty, believed Beccaria, can be a tool for diminishing crime if it follows swiftly and surely upon every crime committed. See C. Blakesley, Extradition in France and the United States: A Comparative Study of the Interaction of Two Domestic Criminal Justice Systems 47 n.42 (1976) (unpublished Thesis in Columbia University School of Law Library). See also M. Maestro, *Cesare Beccaria and the Origins of Penal Reform* (1973). The current debate in the United States over indeterminate sentencing and parole is certainly nothing new. The classical system has something to offer, especially as modified by other systems of criminal justice in an attempt to keep the system as fair and just as possible.

The concept of social defense and, specifically, the aspect of the adjustment of the penalty to meet the needs of society and inferentially those of the individual delinquent, is obviously in contrast with the classical principle. The influence of this new concept and the fundamental question whether the very notion of rehabilitation is viable at all are beyond the scope of this article. On these subjects, see, e.g., works cited at note 3, *supra*; G. Stefani & G. Levasseur, *Droit pénal général* § 324 (8th ed. 1975); Ancel, *La peine dans le droit classique et selon les doctrines de la défense sociale*, 1973 Rev. Sc. Crim. 190; Raymondis, *Les méthodes d’évaluation des résultats des traitements*, 1967 Rev. Sc. Crim. 689; Report of the VIIth Congress of the Int’l Society of Social Defense, held at Paris in November 1971, on the techniques of judicial individualization (1972). On the subject of current dissatisfaction with the school of progressive social defense (*la défense sociale progressive*), see G. Stefani, *supra* note 1, at §§ 366 et seq. The writer believes that if the notion of rehabilitation has any viability at all, that possibility mandates that the most efficient means of accomplishing it be sought.
found in article 729 of the Code of Criminal Procedure.30 Once a convict has served the amount of time required to trigger his availability for conditional liberation, it is mandatory that the judge evaluate the convict’s dossier and make a determination for or against his liberation at least once each year.31 Thus, it is not necessary for the convict to initiate consideration of his dossier, although it is necessary that the convict accept the regime of conditional liberation decided upon by the judge or the Minister of Justice.32

C. The Personal Dossier

Each prison is required to establish and maintain a personal dossier for each convict.33 The personal dossier usually contains five parts which are clearly detailed by the Code of Criminal Procedure. The judicial part (la partie judiciaire), which is maintained only for those persons sentenced to at least one year of imprisonment, includes extracts of the decision of conviction and information regarding the convict’s family status (état civil), his profession, his means of existence prior to

30. C. PR. PEN. art. 729 provides:

Convicts sentenced to one or several penalties of deprivation of liberty (L. no. 70-643 of July 17, 1970) may benefit from conditional liberation if they present serious evidence of social readaptation (L. no. 72-1226 of Dec. 29, 1972).

Conditional liberation can be accorded to convicts who have served half of their sentence. For convicts in a state of legal recidivism, in terms of articles 56, 57, or 58 of the Penal Code, the time of required incarceration is extended to two-thirds of their sentence. (L. no. 75-624 of July 11, 1975).

For convicts with life sentences, the required time of incarceration is fifteen years.

For convicts with a sentence in the nature of penal tutelage (la tutelle pénale), the required incarceration is fixed at three-fourths of the sentence. (L. no. 75-624 of July 11, 1975). (Writer’s trans.)

Some judges and commentators fear that the classical model is being eroded. See note 90, infra.

La tutelle pénale, a new system of control promulgated in 1970, replaced rélegation, which was an early form of societal protection utilizing banishment. La tutelle pénale relates to the special and more severe requirements for sentences meted out to recidivists. See C. PEN. arts. 58-1 et seq.; C. PR. PEN. arts. 728-1 et seq. Although the third paragraph of C. PR. PEN. art. 729 reads “solitary confinement for life” (réclusion criminelle à perpétuité), if translated literally, it is really a term of art referring to the special regime and place of imprisonment required for those sentenced to life imprisonment. See C. PR. PEN. art. 717.

31. C. PR. PEN. art. 730, para. 4.


33. C. PR. PEN. art. D.155; see G. STEFANI, supra note 1, at § 336.
conviction, and his possibilities for making a livelihood after release. It also includes his degree of education, his habitual conduct and morality, and the acts which motivated his conviction. The penitentiary part (la partie pénitentiaire) is prepared by the prison warden and includes information relating to the prisoner's conduct and comportment, his work, his earnings and savings, and the administrative decisions regarding him during his incarceration. This part also contains the disciplinary sanctions imposed on him and the measures taken to encourage his social readaptation while in prison. The medical part (la partie médicale) contains records of the subject's physical and mental health, and the social part (la partie sociale) contains documents used by the members of the prison's social services staff. The character observation part (le cote d'observation) contains records of all investigations, examinations, and expert opinions relating to the subject's personality, his medical, psychological and psychiatric status, as well as his material, familial and social situation. This cote d'observation provides the meat for most of the other parts of the dossier.

D. Variations and Implications of the Decision of Conditional Liberation

The personal dossier serves as the basis for the decision to approve, reject, or adjourn the proposal for conditional liberation. A decision to adjourn a proposal for conditional liberation is usually based on one of the following situations: (1) when parts of the dossier need to be clarified or verified; (2) when certificates of employment, shelter, or sponsorship appear to be invalid or tend to raise questions of impropriety—such as where the convict intends to settle in the same

area as one of his victims; and (3) when the liberation appears to be premature for any reason. If adjournment is decided upon, the convict is told immediately and a new date is set for consideration of the dossier.\footnote{\textsuperscript{42}}

The decision to reject the proposal for conditional liberation does not have to contain the reasons for rejection.\footnote{\textsuperscript{43}} It may be simply that the convict does not appear ready for liberation or that he has not fulfilled the specific prerequisites for liberation.\footnote{\textsuperscript{44}} This failure to provide the convict with the reasons for his rejection is a weakness in the system and has been severely criticized by French commentators.\footnote{\textsuperscript{45}}

Renewal of a rejected proposal for conditional liberation must be made at least within a year of the rejection or when new information favoring the liberation is found. The control factor to ensure consideration of renewals is the requirement that each penitentiary maintain a list that clearly indicates the names, dates of admission into prison, dates of availability for conditional liberation, and dates of the last consideration of the dossier, of each prisoner. This list must be inspected by the Judge of the Application of Sentences during his monthly inspection of the prison.\footnote{\textsuperscript{46}} This control is probably insufficient to ensure the protection suggested by the Code of Criminal Procedure. A right to counsel or an opportunity for the convict to bring new information to the attention of the Judge of the Application of Sentences would provide greater protection and improve control.

Appeal of a rejection of conditional liberation through criminal court channels is not possible. This is a severe weakness in the French system of conditional liberation and has been a major factor preventing the progress of the past few years from ending the arbitrariness of the system.

The availability of an appeal to the \textit{Conseil d'Etat}, how-

\footnote{\textsuperscript{42}} See \textit{Jurisclasseur de Procedure Penal}, \textit{Liberation Conditionelle}, No. 41 (1975).
\footnote{\textsuperscript{43}} C. Pr. Pen. art. C.899.
\footnote{\textsuperscript{44}} The prerequisites for bestowal of conditional liberation are discussed at notes 50-58, infra, and accompanying text.
\footnote{\textsuperscript{46}} C. Pr. Pen. art. D.527.
ever, does represent an important mitigating factor. French judicial structure contains two complete judicial systems functioning side by side. The administrative court system includes trial courts and courts of appeal. This provides an avenue of review for cases which, because of the interests involved, are not within the jurisdiction of the ordinary courts. A decision rejecting conditional liberation, whether it is made by the Judge of the Application of Sentences, or the Minister of Justice, may be appealed to the Conseil d'Etat, the highest court in the administrative court system. Such an appeal may be based on the decision maker's abuse of power, an act taken which exceeds his power, his incompetence, improper form, diversion of power (application of judicial or administrative authority for an improper purpose, détournement de pouvoir), or violation of the law. Several of these bases for an appeal to the Conseil d'Etat contain elements of "fairness" similar to the concept of due process of law in the United States. The Conseil d'Etat can be, and often is, a powerful instrument for the righting of wrongs done by executive or judicial authorities.


48. See Kock, The Machinery of Law Administration in France, 108 U. Pa. L. Rev. 366 (1960). There is a special Conflicts Court (Tribunal des Conflits) to determine whether the interests involved in any particular case fall within the jurisdiction of the ordinary or the administrative courts. The interests generally relate to abuses or deficiencies in the executive or judicial branches of government.

49. Due to the lack of any counterpart to the Conseil d'Etat, regular judicial channels of appeal would have to be available in a system of parole in the United States if it were to adopt any of the techniques or ideas of the French system.
Decisions approving conditional liberation are much more elaborate than those rejecting or adjourning a proposal. The affirmative decision must contain the conditions for bestowal, the conditions and obligations to be met if the conditional liberation is not to be revoked, and the measures of assistance to be provided.

E. Conditions to be Met Before Conditional Liberation is Granted

Conditional liberation is reserved for those prisoners who have shown "serious evidence of social readaptation;" it is designed to benefit those who have promising prospects of readjustment to life in society. Factors evidencing the convict's potential for social readaptation include his social and professional development in prison and the arrangements that he or others have made to facilitate his life in society once he is released. The contents of the personal dossier indicate the factors that are considered important in this determination, such as the convict's psychological profile, his prior employment, level of education or other training, his preparation for a job while in prison, and his establishment of a formula to repay fines or damages arising from his crime.

The conditions required for parole are meant to help ensure social readaptation, and acceptance of the conditions is viewed as evidence that there is a serious possibility that the prospective parolee will adjust to life in society. He may be required to enlist in the armed services, or be placed in a center for shelter or an institution authorized to receive parolees, or be subjected to a regime of hospitalization, or educational or technical training.

50. C. PR. PEN. art. 729; see also C. PR. PEN. art. D.526.
51. For the contents of the dossier, see notes 32-36, supra, and accompanying text.
52. C. PR. PEN. art. D.535 enumerates conditions to which the bestowal of conditional liberation is subordinated:

The decision according the benefit of conditional liberation to a convict may subordinate the granting of this measure to one of the following conditions:

1. to have satisfied a test of semi-liberty of which the modalities are determined by the said decisions;
2. to place all or part of his earnings with the Committee for Probation and
The convict's conduct in prison is still considered to form part of the evidence of his potential for social readaptation, but it is much less important than it was before the 1972 amendments to the Code of Criminal Procedure. In 1972, article 729 was amended to delete the requirement that the convict show "sufficient proof of good conduct in prison." The emphasis has now changed from mere "good behavior" in prison to evidence indicating the likelihood of the convict's success in adjusting to life in society. The convict's training, his development of a formula to pay fines or damages, his agreement to submit to certain conditions, and his arrangements for education, employment, or shelter are now the predominant considerations. His efforts to develop a marketable skill and his arrangements to put that skill to use are also very important. Thus, if the convict has developed a skill in prison he is required to try to find work utilizing that skill once released.

The convict is required to obtain certificates of employment, shelter, or personal sponsorship. The agreements evi-

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53. C. PR. PEN. arts. 729, D.536.
54. C. PR. PEN. art. D.526, para. 2, relating to the investigation of the possibility
enced by these certificates create a legally enforceable obligation against the person or organization agreeing to provide these services. It is important that the convict himself attempt to obtain these certificates, but if he makes a valid attempt and is unable to do so, the social services elements of the prison will assist him. There are no formal requirements for the certificates, except that they must contain the full names of the convict and the signatory (the employer, sponsor, or lodger), and the signatory must include his full address and his relationship to the convict. The certificate must also contain the location of the housing or employment, the nature of the employment, or, if there is no employment involved, the amount and method of subsidization or guarantees of assistance to the convict and his family, including the family’s protection in case the convict falls ill or is injured. It is evident that the amount of material or emotional stress in the environment into which the convict is released is considered to have significant impact on the success of his readaptation.

In principle, the convict is required to pay any fines or costs of justice that resulted from his offense, as well as any damages adjudged to be owed to his victims. Repentance, including remorse, restitution, and redirection, is considered to be a very important indicator of the convict’s social readjustment; the repayment of the costs related to his offense is believed to evidence repentance. Of course, with regard to civil

of approving conditional liberation, reads:

[T]his examination goes essentially to the perspectives of social reclassification of the convicts, notably taking into consideration certificates of employment and shelter, or attestation of engagement for sponsorship, delivered by the Judges of the Application of Sentences or institutions authorized to receive liberated convicts, or the obligation of the convict to return to a unit of the armed forces. (Writer’s trans.)

55. Even a gratuitous obligation to provide services is enforceable under French law if the promise is properly notarized, unless there is "good cause" for refusal to perform. C. Civ. art. 893. Furthermore, if the obligor receives some "benefit," such as a government subsidy or possibly even a sense of having performed a morally praiseworthy act, the promise of services may be enforceable without the requirement of the notarial act. C. Civ. arts. 1101-07, 1120, 1132. See 1 S. Litvinoff, Obligations § 101 in 6 Louisiana Civil Law Treatise 388 (1969), and cases and works cited therein. See also H. Capitant, De la cause des Obligations 5 n.1 (1923).


damages, the convict can not be required to pay unless there is a judgment of damages resulting from an action of civil joiner to the criminal proceeding or a separate action in the civil courts brought by the victim. If the convict is unable to repay these debts immediately, long-term repayment schedules may be arranged.58

F. Conditions, Obligations, and Measures of Assistance Applicable to the Actual Period of Conditional Liberation

Article 731 of the Code of Criminal Procedure authorizes the diverse measures to which the maintenance of conditional liberation, once granted, may be subordinated.59 The specifics of these measures, which relate to control, surveillance, and assistance, are presented by “decree laws” or executive orders which make up part of the Code of Criminal Procedure.60

(1) Measures of Assistance61

The purpose of the measures of assistance is to motivate and supplement the efforts of the liberated convict to become socially readjusted. Emphasis is placed on familial, vocational, and professional aid. The Committee of Probation and Assistance to Liberated Convicts is designated as the vehicle for the implementation of the measures of assistance,62 with the help

58. See C. Pr. Pen. art. C.848.
59. C. Pr. Pen. art. 731 provides:
   The benefit of conditional liberation may be subject to particular conditions as well as measures of assistance and of control designed to facilitate and to verify the readjustment of the liberated convict. (L. no. 72-1226 of Dec. 29, 1972). These measures are placed in operation by the Judge of the Application of Sentences assisted by one of the Committees previewed in article 709-1 (para. 4) and, in the appropriate case, with the concurrence of the charitable organizations authorized for that purpose.
   A decree shall determine the modalities of application of the measures envisioned by the instant article, the composition and the attributes of the Committees of Probation and Assistance to Liberated Convicts, and the conditions for authorization of the organizations mentioned in the preceding paragraph. (Writer's trans.)
C. Pr. Pen. art. 709, para. 4, provides for the Committees of Probation and Assistance to Liberated Convicts.
60. C. Pr. Pen. arts. D.532-.537; C.896-.918.
61. C. Pr. Pen. art. D.532 provides for the measures of assistance to convicts participating in conditional liberation.
of authorized philanthropic institutions established for this purpose.\textsuperscript{63}

The measures of assistance are designed to provide the physical and emotional support necessary for the convict to face and survive the extreme difficulties awaiting him upon release from prison. For example, assistance in finding and keeping employment, familial support (material and emotional), health care protection, and housing are all available. Although employment, shelter and other necessities of life can be provided by social services if the individual is unable to provide them for himself, the recipient's personal effort to obtain them is a prerequisite to his release. Once these services are secured and the parolee is out of prison, support is always available to protect the convict from unforeseen difficulties or abuse by employers or other individuals, and to ensure the continuation of the convict's and his family's means of existence. Thus, the released convict's personal provision for his employment and the support of his family is required for the conditional liberation to continue, but official assistance in case of need, and protection against abuse, are continually available.

(2) Measures of Control and Particular Obligations

The measures of control and particular obligations to which conditional liberation is subordinated are designed to allow the Judge of the Application of Sentences and the committees involved in the parole process to control the manner and means of each convict's existence during his difficult transition from incarceration to total freedom.\textsuperscript{64} The parole agents (agents de contrôle) are to be aware of and supervise the whereabouts and habits of the convicts assigned to them and otherwise to facilitate their continued social adjustment while ensuring the protection of society.

Above all, conditional liberation is subordinated to the parolee's continued good conduct; any notorious bad conduct may cause the revocation of the conditional liberation. In addition, article 533 of the Code of Criminal Procedure lists specific

\textsuperscript{63}. C. Pr. Pen. art. 731.

\textsuperscript{64}. C. Pr. Pen. art. D.533 (3).
measures of control to which conditional liberation may be subjected.65

The Judge of the Application of Sentences may authorize changes of residence after consultation with the prefect of the Department to which the convict wishes to move,66 but if the prefect believes that the move would cause difficulties in his Department, such as when the victim lives in the neighborhood, permission will be denied. The liberated convict must also obtain permission from the Judge of the Application of Sentences to take any trip abroad or any domestic trip beyond the judge's jurisdiction exceeding eight days in duration.67 Any change of residence to a foreign country requires that the judge amend the order awarding conditional liberation.68 Any such amendment to the order of conditional liberation is rare because of the difficulty in obtaining the return of any parolee who has violated the conditions of his conditional liberation while living abroad; extradition generally is not possible for parole violations.69

Article D.537 of the Code of Criminal Procedure lists additional regulatory conditions relating to the parolee's ability to associate with certain persons and to engage in particular activities.70

65. C. Pr. Pen. art. D.533 reads:
   [The liberated convict is]
   1. to reside obligatorily in the place fixed by the decision of conditional liberation;
   2. to respond to the convocations of the Judge of the Application of Sentences or a competent agent of the Committee of Probation and Assistance to Liberated Convicts;
   3. to receive the visits of this agent and to communicate to him the information or documents of a nature to permit the control of the convict's means of existence. (Writer's trans.)


69. See C. Blakesley, supra note 29, at 107-08 nn.191-93, and accompanying text. Escape from prison or violation of parole or probation conditions are rarely listed as extraditable offenses in United States Extradition Treaties. Extradition, therefore, is only available if the underlying offense is listed as an extraditable one. See, e.g., Extradition Treaty, Jan. 9, 1909, United States - France, 27 Stat. 1256, T.S. 561; Supplementary Convention of 1970, United States - France, 22 U.S.T. 407, T.I.A.S. No. 7075.

70. C. Pr. Pen. art. D.537, as modified by Decrees no. 64-735 of July 20, 1964,
All of the conditions and obligations applicable to a particular liberated convict must be described in detail by the order or decision of conditional liberation. The convict has the right to refuse the benefit of liberation under these conditions. However, if he accepts them, any failure to observe the conditions or meet the obligations may result in revocation of the conditional liberation and reincarceration.

G. Duration of Conditional Liberation

The duration of conditional liberation must be at least as long as the amount of time remaining in the convict's sentence when he is released from prison, but it can be extended for one year beyond that date, at the discretion of the Judge of the Application of Sentences. Thus, a convict sentenced to two years imprisonment could be released on conditional liberation after one year in prison and his regime of conditional liberation would last for at least one year, and possibly two. A person sentenced to life in prison is eligible for conditional liberation after fifteen years of imprisonment; his regime of conditional liberation would be for a minimum period of five years and a maximum period of ten years. The purpose of allowing the

1. refrain from driving certain vehicles determined by the categories of permission mentioned in article R.124 of the Traffic Code;
2. refrain from frequenting certain places, such as drinking establishments, racing establishments, casinos, gambling houses, dancing establishments, etc.;
3. refrain from betting, notably in pari-mutuel betting establishments;
4. abstain from all excess in drinking alcoholic beverages;
5. refrain from frequenting with certain convicts, notably the co-authors or accomplices of the offense;
6. refrain from receiving, or sheltering at his domicile, certain persons, notably the victim of the offense;
7. refrain from certain professional activities when the offense was committed in the exercise or related to the exercise of these activities. (Writer's trans.)

Paragraph six of article D.537, requiring the convict not to receive or shelter his victim, must have been placed in the article to control situations where the offense was either a crime against morals or was committed against a spouse or other member of the family with whom the convict might wish to live.

72. See discussion of revocation at notes 83-85, infra, and accompanying text.
73. C. Pr. Pen. art. 732, para. 2.
74. Id.
75. C. Pr. Pen. art. 729, para. 3.
76. C. Pr. Pen. art. 732, para. 3 (L. no. 70-643 of July 17, 1970).
extension of conditional liberation for one year beyond the scope of the original sentence is to allow the judge to determine, in his discretion, whether or not an additional year of the measures of assistance and control would benefit the individual in his adjustment. In this way, the protection from discrimination and the measures of assistance can be continued until the individual has become established as a member of society. 77

H. Juridical Status and Special Circumstances Relating to Participation in Conditional Liberation

Although the convict is liberated from prison, conditional liberation does not extinguish the sentence but merely suspends it. The convict benefiting from conditional liberation remains subject to the civil, familial, or professional incapacities that are imposed on him at his sentencing. 78 Since 1958, however, he is not subject to the legal incapacities that apply specifically to incarcerated prisoners, 79 nor is he prohibited, like the incarcerated convict, from obtaining or enjoying pensions. 80

Special conditions and enhanced supervision (la tutelle pénale) reserved for the recidivist and “more dangerous” prisoners while in prison also affect conditional liberation; those

77. Obviously, the extension of time under a freedom-limiting regime such as conditional liberation could cause constitutional difficulties in the United States. Any attempt to apply this system here would require careful consideration, as the parolee’s freedom of association, right to travel, and participation in certain activities are severely limited. See notes 65-70, supra, and accompanying text, and note 79, infra, and accompanying text.

78. E.g., the right to vote, to carry arms, and to hold fiduciary positions are all restricted. C. Pen. art. 9; see also Commission de Révision du Code Pénal, AVANT PROJET DE CODE PÉNAL (Book I, DISPOSITIONS GÉNÉRALES) art. 33-6-1 (1976); C. Pr. Pen. art. C.921. These incapacities are additional examples of the many constitutional problems that would result from any extension of the period of conditional liberation beyond the term of the convict’s sentence if the system were adopted in the United States.

79. C. Pr. Pen. art. C.921; C. Pen. art. 29 reads: “Persons sentenced . . . shall . . . be legally incapacitated for the duration of their sentence; and a supervisory conservator-guardian shall be appointed for the management of their estates . . . . Legal incapacity shall not apply during conditional liberation.” (Writer’s trans.) (Emphasis supplied.) This means that incarcerated convicts can not make authentic acts affecting their affairs or otherwise manage their affairs, nor can they make any legally binding acts regarding their estates.

under the regime of *la tutelle pénale* are not eligible for conditional liberation until they have served three-fourths of their sentence, and, once released, they are subject to more stringent control than the usual liberated convict.\(^8^1\)

I. Termination of Conditional Liberation

Conditional liberation can be terminated in one of two ways: the convict can either receive his definitive liberation or he can have his conditional liberation revoked and be returned to prison.

(1) Definitive Liberation

The liberated convict who observes the obligations and conditions for the duration of his regime receives his definitive freedom. The official date of definitive liberation for purposes of legal recidivism and rehabilitation harks back to the date of the convict's release on conditional liberation. This is important because after a certain number of years from the official release date all record of the conviction is expunged. After this period, the duration of which is prescribed by the Code and depends upon the offense committed, the convict is legally rehabilitated and any subsequent conviction does not constitute recidivism with its attaching disadvantages.\(^8^2\)

(2) Revocation

The authority for revoking conditional liberation, a description of the actions that induce revocation, and the results of revocation are presented in article 733 of the Code of Criminal Procedure.\(^8^3\) The authority to revoke conditional liberation

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82. C. PR. PEN. arts. 782-800, art. 733, para. 4. An excellent note on the difficulties that would result from trying to have the official release date be that of the definitive liberation follows the Judgment of April 22, 1909, S.1910.1.1968.
83. C. PR. PEN. art. 733 reads:

In case of a new conviction, notorious bad conduct, violation of the conditions, or failure to observe the measures set out in the decision of conditional liberation, this decision [of liberation] may be revoked, following the distinctions of article 730, either, after the opinion of the members of the Committee of Probation and Assistance to Liberated Convicts . . ., by the Judge of the
is divided between the Judge of the Application of Sentences and the Minister of Justice. The duality of authority is based on the same criterion as that for granting conditional liberation. Provisional arrest of the liberated convict may be ordered by the Judge of the Application of Sentences in cases of urgency, but any such provisional arrest must be followed immediately by the proper procedure for the revocation of the conditional liberation.

Three circumstances can motivate the revocation of conditional liberation: (1) conviction of another offense; (2) failure to observe the conditions or obligations enunciated in the decision of conditional liberation; or (3) notorious bad conduct. These circumstances represent indications of the liberated convict’s failure at social readaptation. The vagueness of the latter category is susceptible to abuse that has led similar statutes in the United States to be deemed void for vagueness.

Revocation of conditional liberation theoretically is not a matter of imposing a penal sanction, but rather a means of checking the inobservance of the conditions and obligations of the conditional liberation. The result, of course, is generally reincarceration for all or part of the time that remained to be served in the convict’s sentence at the time he was released on

Application of Sentences competent to set this decision in motion, or on the basis of the proposition of this magistrate, and after the opinion, in the appropriate case, of the Consultative Committee of Conditional Liberation, by the Minister of Justice. The Judge of the Application of Sentences who made the decision of conditional liberation may retract it before it has been executed.

In case of urgency, arrest may be ordered provisionally by the Judge of the Application of Sentences of the place where the liberated convict is found, after hearing and conclusions of the public prosecutor, if appropriate, and subject to the immediate application of the competent authority to revoke the conditional liberation.

After revocation, the convict must serve, according to the provisions of the decree of revocation, all or part of the duration of the penalty that remained for him to serve at the commencement of his conditional liberation, cumulatively, if appropriate, with any new penalty that he might have incurred; the time during which he was placed in the status of provisional arrest counts, in any case, toward the execution of his sentence.

If the revocation does not intervene before the expiration of the time provided in the preceding article, the liberation is definitive. In that case, the sentence is deemed to be terminated from the day of the conditional liberation.

C. Pr. Pén. art. 733. (Writer’s trans.)

See also C. Pr. Pén. arts. D.520-.544, C.937-.953.

84. See note 27, supra, and accompanying text.
conditional liberation; time on conditional liberation is time lost. The deciding authority has the discretion either to have the offending liberated convict continue on conditional liberation, to have him serve only a part of the remaining sentence, or to have him serve the entire remaining sentence plus any additional sentences arising out of the convict’s misconduct. 85

It is possible that a liberated convict, whose period of conditional liberation is extended beyond the date at which his sentence would have expired had he remained in prison, could be reincarcerated after that date for the entire period of time that remained in his sentence on the date of his conditional liberation. Consequently, a convict could be sentenced to two years imprisonment, be released on conditional liberation after one year, spend one year under the conditions of conditional liberation, have that status extended for one year, and finally, (near the end of that last year) be reincarcerated for another year for failure to comply with the conditions. This would mean deprivation of freedom for four years instead of the two he was sentenced to suffer.

The protection of appeal to the Conseil d’État applies to a decision of revocation, as it does to a decision rejecting a proposal for conditional liberation. However, there is no appeal through regular judicial channels and the decisions to revoke are often not accompanied by the reasons for the revocation. Here, as in the case of rejection of conditional liberation, any consideration of possible implementation of these ideas into the system of parole in the United States would have to include written opinions and the right of appeal; the decisions relating to conditional liberation should be judicial decisions in every sense.

III. INSTITUTIONS

This section will briefly describe the organization, personnel, and authority of the major institutions and agencies involved in the conditional liberation of convicts: the Penitentiary Administration (l’Administration Pénitentiaire), the

Judge of the Application of Sentences (le Juge de l'Application des Peines), the Commission of the Application of Sentences (la Commission de l'Application des Peines), the Committee for Assistance to Liberated Convicts (le Comité d'Assistance aux Libérés), and the Consultative Committee for Conditional Liberation (le Comité Consultatif de Libération Conditionnelle).

A. Penitentiary Administration (l'Administration Pénitentiaire)

The Central Penitentiary Administration is the executive agency, under the auspices of the Ministry of Justice, with the responsibility for the proper execution of judicial decisions that deprive the convict of personal liberty. This agency's purpose is to maintain both security in society and the well-being and rehabilitation of all persons placed in detention or on conditional liberty, as well as to administer the prisons and their personnel.86

The Penitentiary Administration is comprised of regional offices in nine geographical divisions,87 and all of these regional offices are controlled by a central office, supervised in turn by the Minister of Justice. The Minister of Justice delegates the director, the general comptrollers, the bureau chiefs, and other important functionaries of the central office. For the most part, the major administrators are trained judges due to the French concept of the duality of the magistrature.88

86. See G. Stefani, supra note 1, at § 327. C. Pr. Pen. art. D.188, Decree of Aug. 24, 1960, reads:

[T]he Penitentiary Administration has for its function to ensure the execution of the judicial decisions that pronounce a sentence depriving the convict of liberty, or ordering provisional detention, and to ensure the safety and maintenance of persons who, in the cases determined by law, must be placed or maintained in detention, by virtue of or following a judicial decision . . . . [I]t manages penitentiary establishments and administers their personnel. But, it also oversees the functioning of the committees of probation. (Writer's trans.)


88. The French notion of the duality of the Magistrature is significant for an understanding of the French Ministry of Justice and the subordinate Penitentiary
This was not always so, however. For over 100 years, from the time of the Revolution of 1789 until 1911, the Ministry of Justice and the judiciary were purposefully excluded from the Penitentiary Administration. The French people developed an extreme distrust of the judiciary during the centuries of abuse by that institution during the Ancien Régime. That distrust manifested itself in severe reforms established during and shortly after the Revolution.8

A strict rule of separation of powers developed with a bias against the judiciary.9 As a con-

Administration. The French Magistracy is divided into two branches. The “standing magistrate” (magistrat debout) represents about one-third of the judges in France. He is the public prosecutor often referred to as le parquet, because his table was traditionally on the main floor of the courtroom, although it is now on the same level as that of the “sitting judge.” The “magistrate sitting at the bench” or “sitting judge” (magistrat du siege), hears arguments from the magistrat debout and decides cases. Judges from the two branches of the French judicial profession wear the same regalia, are educated and recruited from the same source, have equal professional and remunerative status, and are frequently transferred from one branch to the other.

At the trial court level, the magistrat du siege is often referred to as le président and the magistrat debout is referred to as le substitut, meaning assistant public prosecutor, or le procureur. At the appeals court and supreme court levels, the sitting judge is referred to as le président or le conseiller and the prosecutor is referred to as the avocat général or procureur général.

Although some commentators have suggested recently that many magistrats debouts do not consider themselves to be judges, there is considerable transference between the two branches of the magistrature. Nevertheless, judges are in the “civil service” and when assigned to administrative positions they act like administrators with all the deficiencies and advantages that that entails. See generally A. Sheehan, CRIMINAL PROCEDURE IN SCOTLAND AND FRANCE 11 (1975); Dunbar, The French Magistracy, 1968 U. TASMANIA L. REV. 159; Goldstein & Marcus, The Myth of Judicial Supervision in Three “Inquisitorial” Systems: France, Italy, and Germany, 87 YALE L.J. 240, 249, (1977); Schlesinger, Comparative Criminal Procedure: A Plea for Utilizing Foreign Experience, 26 BUFFALO L. REV. 361 (1974).

89. See C. Dickens, TALE OF TWO CITIES (1859); A. Esmein, A HISTORY OF CONTINENTAL CRIMINAL PROCEDURE 278-88 (J. Simpson transl. 1968); A. France, LES DIEUX ONT SOIF (1912). The Ancien Régime is the name given the system of government in France prior to the Revolution of 1789.

90. For example, even today the judiciary cannot hold any legislation invalid or “unconstitutional.” The role may be changing, however. M. Pierre Escande, Judge of the French Cour de Cassation, has suggested that the role of the judge in sentencing matters is greatly expanding. In fact, he suggests that the amount of time or other penalty a convict receives has, since the reforms of 1975, become totally judicialized. These reforms, found in articles 469.1 and 469.2 of the Code of Criminal Procedure, provide the judge, according to M. Escande, with “a flowering of the seeds of sovereign power.” The July 11, 1975, draft permits the judge to dispense with the penalty prescribed by the statute for the individual adjudged guilty, while articles 43.1 and 43.4 of the Criminal Code authorize broad substitutions of the legal punishments provided for each violation of the law. M. Escande sees this expansion of judicial power as a
sequence, not long after the Revolution, all prison administration was insulated from any influence by the judiciary; it was placed under the authority of the Ministry of the Interior, where it remained until the Decree of March 13, 1911, placed it back under the authority of trained judges in the Ministry of Justice.

The legislators of 1911 apparently hoped that the presence of trained judges in positions of authority in the Penitentiary Administration would allow executive decisions to be made with some judicial perspective. Judicial training, it was hoped, would help the administrators to make decisions with a broader purpose than mere bureaucratic expediency. This was not to be, however, and the judicially trained administrators acted just like other administrators. It was not until the creation of a judicial office with jurisdictional decision-making authority in the post-sentencing phase of the criminal justice process that parole promised a significant possibility of success in the rehabilitation of convicts.

B. The Judge of the Application of Sentences (Juge de l'Application des Peines)

As early as 1892, discontent began to be manifest over the manifestation of the reality that the criminal law, traditionally perceived to be unflaggingly harsh, has "buried itself before our eyes in the shroud of purple where the gods lie," as evoked by Renan in his Prière sur l'Acropole. Address by Judge M. Pierre Escande, l'Association Henri Capitant annual meeting (May 15-19, 1978). It is interesting to note that these remarks indicate some trepidation regarding the expansion of judicial authority by a judge on the highest French tribunal. This expansion relates to the power to determine the sentences and not to the control of individual regimes after sentencing. Nevertheless, it does provide an inroad for the application of judicial power to the control of sentencing, even insofar as the post-sentence regime is concerned.

91. Art. 2, Law of 10 vendémiaire IV.
92. The Decree of March 13, 1911, is now art. 89 of the Law of Finances of July 13, 1911; see also C. Pr. Pen. art. D.190. The decision to place the Penitentiary Administration back under the auspices of the Ministry of Justice harked, for precedent, back to articles 34 and 35 of the Criminal Ordinance of 1670 of Jean Baptiste Colbert and Guillaume de Lamoignon, promulgated by the Ancien Régime (all of the laws of the Ancien Régime were made by ordinance). See G. Stefani, supra note 1, at §§ 326-27.
93. See discussion of conditional liberation's early failures at notes 21-23, supra, and accompanying text.
94. Although the institution denominated the Judge of the Application of Sentences has jurisdictional and oversight authority in virtually every aspect of the execu-
exclusion of the judiciary from participation in the post-sentencing regime of the criminal justice process. For example, the report of the Congress of the International Union of Penal Law (l'Union Internationale de Droit Pénal) in 1892 declared:

As criminal tribunals and the Penitentiary Administration have the same goal and as the conviction [of criminals] has its only value through its mode of execution, the separation consecrated by our modern law between the judicial function and the penitential function must be rejected as irrational and harmful. 5

These murmurings received some legislative recognition in 1911, when the Ministry of Justice replaced the Ministry of the Interior as the executive authority over the Penitentiary Administration. This change in administrative control, however, did not produce the desired judicial control of, or perspective or influence in, the post-sentencing phase of the criminal justice process. Such effects could only result from the creation of a judicial office, separate from the prison administration, appointed to oversee the post-sentencing regime.

Italy was the first to manifest its understanding of this principle when, in 1930, it created the office of Surveillance Judge, charged, in conjunction with the Execution Judge, with the supervision of the sentence that the latter had imposed. 6

Some French jurists hoped to follow Italy's lead and held several congresses in the 1930's to advocate the establishment of a judicial authority to supervise and even modify the post-sentence regime. 7 Eventually, in 1945, the French Penitentiary Administration adopted a regulation assigning a judge to "control the execution of sentences." 8 This judge was still an

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5. GARNON, Compt rendu du congrès de l'union int'l de droit pénal (Session de Paris des 26-28 juin 1893), 17 Bull. de la Société Générale des Prison 899, 900 (1893). The French conception of "penitential" includes both the penal and rehabilitative authorities.

6. C.P. arts. 144, 148 (Italy); C.P.P. art. 627 (Italy), cited in G. STEFANI, supra note 1, at § 324, p. 343.

7. See G. STEFANI, supra note 1, at § 324, p. 344. These included the Congress of the Society of Prisons in 1932 and the International Congress of Penal Law in 1937.

8. Article 9 of the program promulgated by the Commission for Penitentiary Reform was adopted in 1945 as an interval regulation of the Penitentiary Administration. See G. STEFANI, supra note 1, at § 324, n.2.
administrative designate, however, and had no authority for judicial action.

Finally, in 1952, an executive order created the Committee for Assistance to Liberated Convicts (le Comité d'Assistance aux Libérés), presided over by a judge to be attached to the Court of Primary Jurisdiction (le Tribunal de Grande Instance). This judge, not attached to or controlled in any way by the Penitentiary Administration, was charged by this executive order to oversee and control the regime of conditional liberation.

In 1958, the institution of the Judge of the Application of Sentences, with the authority to control and oversee not only conditional liberation, but the entire post-sentence regime, became a reality under the Code. The original article 721 of the 1958 Code of Criminal Procedure provided for the office of this judge to be attached to the Tribunal de Grande Instance and the office was designed to control and oversee the in-prison and early-release regime of each convict. One Judge of the Application of Sentences was assigned to each prison.

These advances notwithstanding, the true judicial role in the process remained weak because the Judge of the Application of Sentences was given no jurisdictional or decision-making authority. Since 1958, however, several laws have expanded his power to include at least partial jurisdictional authority.

Each Tribunal de Grande Instance assigns one or more of its judges to function as the Judge of the Application of Sentences. The number assigned that role depends on the number of prisons within the tribunal's jurisdiction. The position of the Judge of the Application of Sentences within the judicial hierarchy is analogous to that of the Investigating Judge and the appointment is for a period of three years. Article 722 of the Code of Criminal Procedure provides that this judge is to determine the principal modalities of each convict's treatment,

99. Decree no. 52-356 of April 1, 1952, art. 6.
100. The original article 721 was changed by Law no. 72-1226 of Dec. 29, 1972, art. 45, and is now C. PR. PEN. art. 722.
101. Id.
103. See C. PR. PEN. art. 50.
including placements of all types outside prison, as well as progressive and rehabilitative in-prison and post-incarceration regimes.  

Many French commentators and some legislators believe that, because the judiciary has the responsibility to determine the form and scope of social reaction to crime in each individual case through the imposition of sentences, the judiciary should also be the primary authority to control and, if need be, to intervene in the post-sentencing regime. The French Constitution of 1958 provides fuel for this view; the judiciary, "the guardian of individual liberty," should control the operation of the execution of sentences. Nevertheless, plenary judicial decision-making power has not been established.

The Judge of the Application of Sentences has substantial authority to control, but not to make, judicial decisions regarding the in-prison regime. The Judge of the Application of Sentences cannot, nor should he, substitute himself for the prison warden or for the Regional Director of Prisons in matters of the function and organization of the prison. This limitation notwithstanding, the Judge of the Application of Sentences does have the responsibility to:

assure the individualization of the execution of the judicial sentence by orienting and controlling the conditions of its application. To this effect, the authority is his to decide the principal modalities of the treatment to which each convict will be submitted . . . .

Thus, the Judge of the Application of Sentences has significant authority in the oversight of, if not plenary decision-making power over, the rehabilitative process during both the penitentiary and post-release regimes.

104. C. Pr. Pen. art. 722, L. no. 72-1226 of Dec. 29, 1972, reads:

Attached to each prison, the Judge of the Application of Sentences determines for each convict the principal modalities of his penitentiary treatment, notably by approving placement to the outside, semi-liberty, and permissions of leave. In those establishments where the regime is progressively adapted to the degree of amendment and to the possibilities of each convict's rehabilitation, [the judge] pronounces [the convict's] admission to the different phases of that regime. (Writer's trans.)

105. G. Stefani, supra note 1, at § 268, p. 294-95.

106. Const. of 1958, art. 66.

To assist the judge in this control, the Code of Criminal Procedure requires that all *circulairs* and instructions prescribed by the Central Prison Administration be sent to him. He must be informed of all incidents relating to the order, discipline, or security of the prison in his charge. He must be advised "within a brief period of time" of any decision made by the warden relating to the order, discipline, or security of the prison, and the register of all disciplinary action must be shown to him during his monthly inspection of the prison. The judge is a member of the prison's oversight committee which has the responsibility to ensure both the prison's compliance with administrative regulations and the salubrity, health services, security, food, work discipline, education, and moral reform of the prisoners. The Judge of the Application of Sentences is required to visit the prison in his charge at least one time per month in order to verify the conditions under which the convicts are executing their sentences. Prisoners may demand a private hearing with him during these visits. He must examine all of the registers containing information on prisoners, such as the one showing eligibility for conditional liberation. However, despite the theoretical appeal of the system, it remains to be determined whether the judge actually controls the administrators or whether, to the contrary, they control him. It is not clear, for example, whether the prison warden's control over the preparation of the dossiers actually dominates any decision made by the Judge of the Application of Sentences.

These functional question-marks notwithstanding, the Code of Criminal Procedure provides extensive measures to facilitate the judge's control over and intervention in the prison regime. However, his authority to make certain decisions and

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111. C. PR. PEN. arts. D.180, D.184, 727.
112. C. PR. PEN. arts. D.176, 727.
113. C. PR. PEN. art. D.232. This conversation must be outside the presence of all prison personnel and may even be in the prisoner's cell.
114. C. PR. PEN. art. D.259.
115. C. PR. PEN. art. D.527.
to control the in-prison regime of convicts appears to be more administrative than judicial in nature under current French law. The decisions made during the in-prison phase of the sentence are made by the Judge of the Application of Sentences without debate and without any representation of the convict by counsel. The judge's decisions are not accompanied by a written rationale, and they are not open to appeal. The decisions are not legally final in the sense of res judicata or collateral estoppel nor do they give rise to the protection of the principle prohibiting double jeopardy; they do not have l'autorité de la chose jugée. The judge, therefore, without the benefit of a confrontation hearing or representation of the convict by counsel, always has the authority to retract any decision he has made or to reverse the progressive program of the penitentiary regime by placing the convict in a more severe phase of that regime. In spite of this, there are aspects of the in-prison authority of the Judge of the Application of Sentences that are judicial in nature, as for example, the decision to reduce the regime's duration or to suspend provisionally or fractionalize the sentence prescribed by the court. These, however, are the aspects of his function that are ameliorative or favorable to the convict as opposed to those that would be considered to be unfavorable, from the convict's perspective. It is unfortunate that the full-blown judicial authority, including the inherent protections of the individual, apply only to the former and not the latter. For the role of this judge to be as beneficial as it could be, his function should be made wholly judicial in nature.

In the extra-penitentiary phase of sentence execution, the Judge of the Application of Sentences does more that is truly judicial in nature than during the in-prison phase. For example, when he distributes or cancels obligations imposed on the convict by the judgment of conditional liberation, or when he makes an order for the provisional arrest of a convict on proba-
CONDITIONAL LIBERATION IN FRANCE

Any change or modification of the obligations of persons on conditional liberation has the force of law (l'autorité de la chose jugée) and has a binding effect on future legal actions.

The authority of the Judge of the Application of Sentences does not cover all proposals for conditional liberation. The authority to decide on conditional liberation is given either to the Judge of the Application of Sentences or to the Minister of Justice, depending on the length of sentence imposed on the individual under consideration. Article 732 provides the decision-maker with the authority to prescribe, in the judgment of conditional liberation, the modalities and conditions for its bestowal and maintenance.

In addition to the authority to bestow and to set the modalities of conditional liberation for certain convicts, the Judge of the Application of Sentences has the authority to revoke this benefit for violation of conditions, conviction for another offense, or notorious bad conduct.

The Judge of the Application of Sentences' authority to

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121. See discussion of C. Pr. Pen. art. 730 at notes 27 & 28, supra, and accompanying text.

122. C. Pr. Pen. art. 732 reads:

The decision of conditional liberation fixes the modalities of execution and the conditions to which the granting and maintenance of that liberty are subordinate, as well as the nature and duration of the measures of assistance and control. If [the decision] is made by the Minister of Justice, it may provide that the release will be effectuated on the day fixed by the Judge of the Application of Sentences, between two determined dates (L. no. 72-1226 of Dec. 29, 1972).

During the entire duration of the conditional liberty, the dispositions of the decision may be modified, in accordance with the distinctions of article 730, either, after an opinion of the members of the Committee of Probation and Assistance to Liberated Convicts who have taken the convict in charge, by the Judge of the Application of Sentences competent to effectuate this decision, or, under the proposal of this magistrate, and after the opinion, when appropriate, of the Consultative Committee for Conditional Liberation, by the Minister of Justice. (L. no. 72-1226 of Dec. 29, 1972). (Writer's trans.)

123. C. Pr. Pen. art. 733; see discussion of revocation of conditional liberation, supra notes 83-85, and accompanying text.
control the extra-penitentiary regime of the sentence is extensive and significant. He oversees the measures of control, surveillance, and assistance for all those admitted to the regime of conditional liberation, regardless of whether or not he approved their liberation. If he was the one who approved it, then he determines the method of conditional liberation as well. He has an important influence in the determination of the conditions and measures of assistance for conditional liberation even in cases in which the decisional authority rests with the Minister of Justice because, as President of the Committee of Probation and Assistance to Parolees, he makes the proposal of conditional liberation to the Minister of Justice.

Thus, the Judge of the Application of Sentences has developed into a major force in the process of rehabilitating convicts. His judicial decision-making power has become a reality in a limited sphere and may be expanded to make the judiciary the uncontested master of conditional liberation.

C. Commission for the Application of Sentences (La Commission de l'Application des Peines)

Each prison in France has a Commission for the Application of Sentences attached to it. The Commission is presided over by the Judge of the Application of Sentences and is composed of the warden, the directive personnel of the prison, the chief of supervision, the prison educators, the prison social assistants, the prison doctor, the prison psychiatrist, and such

125. C. Pr. PEN. arts. 731, D.530, D.538.
126. For a discussion of the authority to modify conditional liberation conditions, see notes 64-72, supra, and accompanying text.
127. C. Pr. PEN. arts. D.83-1, D.96. The participants include:
   1. educators, delegated by the Department of Education to work with the Commission;
   2. probation assistants;
   3. ad hoc delegates;
   4. social assistants;
   5. volunteer delegates;
   6. active members;
   7. honorary members and benefactors.
   (Writer's trans.)
128. C. Pr. PEN. art. D.96.
other permanent or temporary personnel as the president of the Commission deems necessary.\textsuperscript{129}

The overriding purpose of the Commission is to assist the Judge of the Application of Sentences in determining the treatment of each prisoner. It is within this commission that the Judge of the Application of Sentences approves or rejects conditional liberation and other release regimes. The Commission has the duty to review, at least once each year, the dossier of each convict who has served the minimum amount of time required to trigger his availability for conditional liberation.\textsuperscript{130}

\textbf{D. Committee for Assistance to Liberated Convicts (Comité d’Assistance aux Libérés)}

The Committee for Assistance to Liberated Convicts, under the presidency of the Judge of the Application of Sentences,\textsuperscript{131} effectuates the measures of assistance and control of convicts benefiting from conditional liberation. The Committee must verify and facilitate the social readaptation of the liberated convicts and ensure the security of society.\textsuperscript{132} One committee is attached to each Court of Primary Jurisdiction (Tribunal de Grande Instance),\textsuperscript{133} and is comprised of educators, probation officers, and volunteers, among others.\textsuperscript{134}

Each participant, denominated an “agent,” is assigned by the president of the Committee to roles of surveillance, control, and assistance.\textsuperscript{135} Each agent is assigned several liberated con-

\textsuperscript{129} C. PR. PEN. art. D.96, para. 2.
\textsuperscript{130} A similar committee is designed to help the Minister of Justice make his decision on conditional liberation. C. PR. PEN. arts. D.520-.524. The Consultative Committee for Conditional Liberation (Comité Consultatif de Libération Conditionnelle) is attached to the Central Prison Administration and the president and vice president are appointed from among the judges of the Cour de Cassation (Supreme Court). The other members of the Committee include the Inspector General of the Ministry of the Interior, an additional representative of the Ministry of the Interior, one Minister of State responsible for national defense, one magistrate from the Central Administration of the Ministry of Justice, the chief magistrate of the Bureau of Grace and Conditional Liberation (Ministry of Justice), one Judge of the Application of Sentences, and one voluntary delegate from the Committee for the Protection of and Assistance to Parolees. C. PR. PEN. art. D.520.
\textsuperscript{131} C. PR. PEN. art. D.547, as modified by Decree no. 72-852 of Sept. 12, 1972.
\textsuperscript{132} C. PR. PEN. arts. 731, para. 2, D.538, D.542; C. PEN. art. R.8.
\textsuperscript{133} C. PR. PEN. arts. D.545-.546.
\textsuperscript{134} C. PR. PEN. art. D.547.
\textsuperscript{135} C. PR. PEN. art. D.548.
and is responsible for the material and emotional well-being of these convicts and their families. At trimonthly meetings the agents report on the progress and the needs of "their" convicts, and any modification to be made in a regime is discussed and developed, unless it is a matter of urgency. The members of the Committee are subject to the law of professional secrets; they are criminally and civilly responsible for the confidentiality of the Committee's relationship with each liberated convict.

IV. CONCLUSION

As it is currently conceived, the system has taken a step, but only a step, toward making the parole system a judicial function with all of the protections for the individual and society that that entails. There are several questions that need answers. Must the French, or any other system of parole, make a complete break from executive administration in order to effectuate a really successful reform of the system? If the Judge of the Application of Sentences were given plenary authority for all decisions on conditional liberation and if those decisions were truly judicial decisions, would the system hold more potential for achieving the goals conceived by Bonneville de Marsangy? Should parole reform in the United States adopt any portion of the French system or its ideal?

Any reform of the United States Code relating to criminal justice and any state revisions of criminal procedure should consider the positive elements of the French theory. The possibility that the adoption of aspects of that ideal may help ensure the certainty of sentencing and punishment desired by defendants, victims, and the rest of society in the United States without eliminating the rehabilitative value of conditional liberation is worth any slight delay that contemplation of the ideal would require.

140. Id. In case of urgency the Judge of the Application of Sentences may make a decision without holding a meeting.
Its deficiencies notwithstanding, conditional liberation has the potential to be an autonomous part of the rehabilitation process. It is an institution that can provide an incentive for rehabilitation for convicts and help achieve the societal goal of reintegrating former criminals into society. It is at once a motivating tool, a test of a convict's social readaption, and a means of protecting society while giving the released convict an opportunity to adjust to freedom with a minimum of the pressures and difficulties usually associated with release from prison. It is hoped that no decision will be made to terminate the system of parole in the United States without considering the valuable attributes of the French system.

An essential element of French reform has been the development, although far from complete even in their legislation, of judicial authority and control over conditional liberation and other post-sentence regimes. It may be doubted that the French judge today has as much power as he should have under even their somewhat modest system. The major issue is whether the judge has, or whether he can, overcome the administrative deficiencies, and indeed the administrative attitudes, that creep into individuals, albeit judges, given administrative tasks. The important fact remains, however, that if the judiciary is given authority over the post-sentence regimes and is required to make judicial decisions at every level, the external protections for the convict may well be the means of solving the major deficiencies in the program.